IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.20335 of 2014 (O&M)
Date of decision: 28.05.2015

Dharambir ... Petitioner

Vs.

Presiding Officer and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Dalip Kumar Tuteja, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

C.M.No.13694 of 2014

The application is allowed, subject to all just exceptions. Documents Annexures P-2 and P-3 are taken on record.

CWP No.20335 of 2014

Challenge in the present writ petition is to the Award dated 03.07.2013 (Annexure P-1) passed by Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak, vide which the reference qua alleged termination has been answered against the workman.

The petitioner was appointed as Gatekeeper by the respondent-Management and after four years thereof, the petitioner

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was appointed as Peon upto 06.06.2002 but his services were terminated without giving any reasons, notice, much less, retrenchment compensation. A demand notice qua his alleged termination was served and the matter was compromised. The workman was reinstated with full back wages, but the Management by playing trick did not re-instate him, which necessitated him to approach the office of Labour-cum-Conciliation Officer, Rohtak (not proved or placed on record). Since the Conciliation proceedings failed, the matter was referred to the Labour Court. Before the Labour Court, Management had taken a stand that the workman started absenting from work w.e.f. 3.6.2002. He was issued letters dated 15.6.2002, 3.7.2002 and 2.8.2002 asking him to report for duty/work, but the workman failed to answer the aforementioned requests, much less, report for work. Accordingly, the charge sheet was also served upon the workman on 11.9.2002 and thereafter, a settlement dated 29.10.2002 was arrived at between the parties. As per the settlement, the petitioner reported for work only for one day on 30.10.2002 but as per the stand of Management, the workman did not report for duty, which necessitated the Management to send a registered letter dated 6.11.2002.

Mr. Dalip Kumar Tuteja, learned counsel for the petitioner, submits that once the workman was not allowed for work after the settlement, it is not a case of abandonment, in fact it is a case of retrenchment, which is totally in violation of Section 25-F of the

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Industrial Disputes Act, 1947 (hereinafter referred to as 'I.D.Act'). No notice had been sent, much less, Management had not held any inquiry thereafter.

I have heard learned counsel for the petitioner and appraised the paper book.

It is a matter of record that the petitioner did not receive a letter dated 06.11.2002 but the Labour Court has noticed the factum of receiving the letter. The relevant lines are reproduced herein below:-

> *"Even otherwise, the petitioner-workman while appearing as witness in the witness box as WW-1 could not deny the factum of receipt of these letter and categorically admitted the receipt of those letters and also proved the AD of the same. Therefore, it is clear that the respondent-Management repeatedly asked the petitioner-workman to join the duties immediately, but the petitioner/workman did not join his duties. It also emerges from the evidence led by the respondent-management that the petitioner was not only a habitual absentee but also shows his conduct, so the petitioner/workman was certainly stopped from filing the present claim statement and as such the question of violation of provisions of Section 25-F, 25-G and 25-H of the Act by respondent-management in the instant case did not arise at all as the said provisions of*

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the Act are not attracted in the instant case. Accordingly, these issues are hereby decided in favour of the respondent/management and against the workman."

Since the workman has admitted the receipt of the letter and allegation of the workman viz-a-viz termination in violation of provisions of Section 25-F of the I.D.Act, termed into retrenchment does not have any substance. It is clear cut case of abandonment and the law on the abandonment is settled. In the instant case, the the Management has discharged the burden by proved on record the registered letter/AD, which is unequivocally admitted by the petitioner-workman and no explanation has come forth as to why the workman did not join the duty despite the receipt of the letter. No explanation has either been given before the Labour Court, much less, document in this regard proved nor in the present writ petition. In the absence of the documents, presumption of abandonment is writ large.

In view of what has been observed above, there is no merit in the present writ petition.

Dismissed.

(AMIT RAWAL)
JUDGE

May 28, 2015
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